

Nuclear Regulatory Commission

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§ 2.324 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§ 2.325 Burden of proof.

Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.

§ 2.326 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen that relates to a contention not previously in con-

troversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b).

[69 FR 2236, Jan. 14, 2004, as amended at 77 FR 46593, Aug. 3, 2012]

§ 2.327 Official recording; transcript.

(a) *Recording hearings.* A hearing will be recorded stenographically or by other means under the supervision of the presiding officer. If the hearing is recorded on videotape or some other video medium, before an official transcript is prepared under paragraph (b) of this section, that video recording will be considered to constitute the record of events at the hearing.

(b) *Official transcript.* For each hearing, a transcript will be prepared from the recording made in accordance with paragraph (a) of this section that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system.

(c) *Availability of copies.* Copies of transcripts prepared in accordance with paragraph (b) of this section are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge specified by the Chief Administrative Judge.

(d) *Transcript corrections.* Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer must be included in the record as an appendix. When so incorporated, the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections, pages may not be substituted but, to the extent practicable, corrections must be

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made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. If the correction consists of an insertion, it must be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

§ 2.328 Hearings to be public.

Except as may be requested under section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission.

§ 2.329 Prehearing conference.

(a) *Necessity for prehearing conference; timing.* The Commission or the presiding officer may, and in the case of a proceeding on an application for a construction permit or an operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, shall direct the parties or their counsel to appear at a specified time and place for a conference or conferences before trial. A prehearing conference in a proceeding involving a construction permit or operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter must be held within sixty (60) days after discovery has been completed or any other time specified by the Commission or the presiding officer.

(b) *Objectives.* The following subjects may be discussed, as directed by the Commission or the presiding officer, at the prehearing conference:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation, and;

(5) Facilitating the settlement of the proceeding or any portions of it.

(c) *Other matters for consideration.* As appropriate for the particular proceeding, a prehearing conference may be held to consider such matters as:

(1) Simplification, clarification, and specification of the issues;

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(2) The necessity or desirability of amending the pleadings;

(3) Obtaining stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof, and advance rulings from the presiding officer on the admissibility of evidence;

(4) The appropriateness and timing of summary disposition motions under subparts G and L of this part, including appropriate limitations on the page length of motions and responses thereto;

(5) The control and scheduling of discovery, including orders affecting disclosures and discovery under the discovery provisions in subpart G of this part.

(6) Identification of witnesses and documents, and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the establishment of reasonable limits on the time allowed for presenting direct and, where permitted, cross-examination evidence;

(7) The disposition of pending motions;

(8) Settlement and the use of special procedures to assist in resolving any issues in the proceeding;

(9) The need to adopt special procedures for managing potentially difficult or protracted proceedings that may involve particularly complex issues, including the establishment of separate hearings with respect to any particular issue in the proceeding;

(10) The setting of a hearing schedule, including any appropriate limitations on the scope and time permitted for cross-examination where cross-examination is permitted; and

(11) Other matters that the Commission or presiding officer determines may aid in the just and orderly disposition of the proceeding.

(d) *Reports.* Prehearing conferences may be reported stenographically or by other means.

(e) *Prehearing conference order.* The presiding officer shall enter an order that recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and the issues or matters in controversy to be determined in the proceeding. Any objections to the order